

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

12/18/2001

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2001-091546

FILED: \_\_\_\_\_

CAROL DECINCQUE

CAROL DECINCQUE  
BOAT ROUTE N TEN MILE LAKE  
LAKESIDE OR 97449-0000

v.

DAVID CRAFT, et al.

JAMES N MACKINLAY

DISPOSITION CLERK-SE  
MESA JUSTICE CT-EAST  
REMAND DESK-SE  
DAVID CRAFT AND  
JENNIFER CRAFT  
5250 E ELENA  
MESA AZ 85206

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the East Mesa Justice Court, and the Memorandum submitted by Appellants. No Memorandum has been received from Appellee, said memorandum having been due November 26, 2001.

This is an appeal in a Forcible/Special Detainer Action from the trial court's denial of Defendants/Appellants Motion

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

12/18/2001

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2001-091546

pursuant to Rule 60(c), Arizona Rules of Civil Procedure, Motion to Set Aside a Judgment. The Court's file indicates that Appellants were served when a Process Server posted the Complaint and Summons on the door of their residence on December 17, 1999. The address listed as Appellants' residence was: 5528 E. Florian Avenue, Mesa, Arizona. Appellants did not appear at the trial and a Default Judgment was entered against them in the amount of \$3,945.25 on December 23, 1999. Thereafter, Appellants filed a Motion to Set Aside the Default Judgment on May 18, 2001. No response to Appellants' motion was filed by the Plaintiff/Appellee; however, the trial judge denied the Motion to Set Aside Judgment without reason on June 4, 2001. Appellants allege the trial judge erred in denying their Motion to Set Aside Judgment because they had moved out of the residence which was the subject of the Forcible/Special Detainer Action in August, 1999. Appellants claim that service was insufficient because they did not reside at the residence where the Complaint and Summons were posted, and, more importantly, Appellee/Plaintiff was aware that they did not reside at that residence because they had terminated their month to month tenancy in writing and provided notice of this to Plaintiff/Appellee. Given Appellant's uncontested allegations of fact in their Motion to Set Aside Judgment (that Plaintiff/Appellee had perpetrated a fraud upon the court in obtaining service upon Appellants, and then obtaining a judgment by fraud), it is clear that the trial court erred in denying Appellants Motion to Set Aside the Default Judgment.

IT IS THEREFORE ORDERED reversing the lower court's order of June 4, 2001 denying Appellants Motion to Set Aside Judgment pursuant to Rule 60(c), Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED remanding this matter back to the East Mesa Justice Court with directions to grant Defendants/Appellants Motion to Vacate Judgment, and to vacate the Default Judgment of December 23, 1999.